



# PUBLIC NOTICE

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June 17, 2005

## AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR NOVEMBER 1, 2005

### **Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 62**

Report No. AUC-05-62-B (Auction No. 62)

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## I. GENERAL INFORMATION

### A. Introduction

By this public notice, the Media Bureau (“MB”) and Wireless Telecommunications Bureau (“WTB”) (collectively the “Bureaus”) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits scheduled for November 1, 2005 (Auction No. 62). On April 14, 2005, in accordance with the Section 309(j)(3) of the Communications Act of 1934, as amended,<sup>1</sup> the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 62.<sup>2</sup> The Bureaus received 15 comments, one reply comment and one supplement to the reply comment in response to the *Auction No. 62 Comment Public Notice*.<sup>3</sup>

#### 1. Construction Permits to be Auctioned

Auction No. 62 will offer 172 construction permits in the FM broadcast service for stations throughout the United States and the U.S. Virgin Islands. The construction permits to be auctioned include 172 new FM allotments, including 30 FM construction permits that were offered, but not sold, in Auction No. 37.<sup>4</sup> These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments,<sup>5</sup> pursuant to the Commission’s established rulemaking procedures, designated for use in the indicated communities. Please note that the number assigned to each construction permit has been revised from those that were included in the *Auction No. 62 Comment Public Notice*. The updated construction permit numbers are listed in Attachment A to this public notice.

Mr. Cronin and Mr. Austin request that specific additional FM channels be added to the list of FM allotments to be auctioned in Auction No. 62.<sup>6</sup> In the interest of an effective and efficient auction process, we decline to enlarge the Auction No. 62 inventory by adding additional FM allotments at this time. The specific vacant FM allotments at issue will however, be included in a subsequent FM auction. Two commenters ask that specific FM allotments be removed from the Auction No. 62 inventory, asserting that existing stations provide sufficient service and concluding that the communities at issue cannot support

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<sup>1</sup> 47 U.S.C. § 309(j)(3)(E)(i).

<sup>2</sup> See “Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures for Auction No. 62,” *Public Notice*, DA 05-1076 (April 14, 2005) (“*Auction No. 62 Comment Public Notice*”). A summary of the *Auction No. 62 Comment Public Notice* was published at 70 Fed. Reg. 21782 (2005).

<sup>3</sup> Comments were filed by Ted W. Austin, Jr.; CODO Group, LLC (“CODO”); Stephen Cronin; Eric Funk; Hodson Broadcasting (“Hodson”); Jeremy Itz; Marquee Broadcasting, Inc. (“Marquee”); Minority Media and Telecommunications Council (“MMTC”); Mullaney Engineering, Inc. (“Mullaney”); Smith Broadcasting, Inc. (“Smith”); Strattan Broadcasting, Inc. (“Strattan”); Summit Media Broadcasting, LLC (“Summit”); Sutton Radiocasting Corporation (“Sutton”); R. Stan Thompson; and jointly by Wildcat Communications, LLC and Connoisseur Media, LLC (“Wildcat/Connoisseur”). Mullaney submitted reply comments and supplemental reply comments. In addition, R. Stan Thompson submitted an e-mail seeking guidance on activity requirements, stopping rules, and other such auction procedures. (Mr. Thompson’s concerns are being addressed informally by Commission staff.) All these comments have been posted on the Auctions web site at <http://wireless.fcc.gov/auctions>.

<sup>4</sup> “FM Broadcast Construction Permits Auction Closes, Auction No. 37 Winning Bidders Announced; Payment and Application Deadlines Established,” *Public Notice*, 20 FCC Rcd 1021 (WTB/MB 2004).

<sup>5</sup> 47 C.F.R. § 73.202(b),

<sup>6</sup> Cronin Comments at 1. Austin Comments at 1.

additional stations based on declining populations. Smith asks that FM 169 and FM 170, Wheatland, WY, be removed, and Stratton asks that FM 110, Farmington, PA, and FM 112, Strattonville, PA, be removed.<sup>7</sup> We will not remove the four FM allotments from the auction inventory, as Smith and Stratton request, in light of the expressions of interest filed in the respective rulemaking proceedings to amend the FM Table of Allotments.<sup>8</sup> Simply removing the allotments from this auction does not delete the FM channel from the Table of Allotments. Rather, an entity must submit a petition for rulemaking to delete an allotment from the FM Table of Allotments.<sup>9</sup> Finally, because the winning bidder for the Mason, Texas FM allotment in Auction No. 37 defaulted on its high bid, Mr. Itz contends that, as second highest bidder, he should be permitted the opportunity to purchase the FM construction permit at his net bid amount before the permit is included in another auction.<sup>10</sup> Mr. Itz's request is being considered separately along with other similar requests by unsuccessful bidders in Auction No. 37.

Pursuant to the policies established in the *Broadcast First Report and Order*, applicants may apply for any vacant FM allotment listed in Attachment A; applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures.<sup>11</sup> Attachment A also lists the reference coordinates for each vacant FM allotment are also listed in Attachment A.<sup>12</sup> When two or more short-form applications (FCC Form 175) for an FM allotment are accepted for filing, mutual exclusivity ("MX") exists for auction purposes.<sup>13</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.<sup>14</sup>

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<sup>7</sup> Smith Comments at 1. Stratton Comments at 1-2.

<sup>8</sup> See *Wheatland and Wright, Wyoming*, 15 FCC Rcd 20289 (MMB 2000); *Strattanville and Farmington Township, Pennsylvania*, 15 FCC Rcd 23848 (MMB 2000), *recon denied*, 17 FCC Rcd 7203 (MB 2002).

<sup>9</sup> See 47 C.F.R. §§ 1.401(d); 73.202.

<sup>10</sup> Itz Comments at 2-3. See Letter to Monte L. Spearman, DA 05-1118, (assessing initial payment on Spearman Properties, LLC for default on winning bids in Auction No. 37 including the Mason, TX allotment).

<sup>11</sup> See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920, 15961, 15974-15975 (1998) ("*Broadcast First Report and Order*"), *on recon.*, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) ("*Broadcast First Reconsideration Order*"), *on further recon.*, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999).

<sup>12</sup> With regard to the FM service, the Commission gave applicants the opportunity to submit a set of preferred site coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid. See *Broadcast First Report and Order*, 13 FCC Rcd at 15974 and n.153. Further information regarding preferred site coordinates may be found in Attachment C to this public notice.

<sup>13</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15978-80 ¶¶ 149-154. See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 2348, 2376 ¶ 165 (1994) ("*Part 1 Second R&O*").

<sup>14</sup> Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its place in the MX Group but, having purchased no bidding eligibility, will not be eligible to bid.

## **B. Rules and Disclaimers**

### **1. Relevant Authority**

Prospective bidders must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications.<sup>15</sup> Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 C.F.R. §§ 73.201 – 73.333, 73.1001 – 73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in Title 47, Part 1, Subpart Q, and Part 73, Subpart I of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this public notice, the *Auction No. 62 Comment Public Notice* and the *Broadcast First Report and Order*,<sup>16</sup> the *Broadcast First Reconsideration Order*<sup>17</sup> and the *New Entrant Bidding Credit Reconsideration Order*<sup>18</sup> and the *NCE Second Report and Order*.<sup>19</sup>

The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC, 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 or <http://www.bcpiweb.com>.<sup>20</sup>

### **2. Prohibition of Collusion**

To ensure the competitiveness of the auction process, the Commission's Part 1 rules prohibit applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section

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<sup>15</sup> See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) ("*Fifth Report and Order*"); *id.*, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) ("*Seventh Report and Order*"); *id.*, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002); *id.*, *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003).

<sup>16</sup> See generally *Broadcast First Report and Order*, 13 FCC Rcd at 15920.

<sup>17</sup> See *Broadcast First Reconsideration Order*, 14 FCC Rcd at 8724.

<sup>18</sup> See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999) ("*New Entrant Bidding Credit Reconsideration Order*").

<sup>19</sup> See Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, 18 FCC Rcd 6691, 6697 (2003) ("*NCE Second Report and Order*").

<sup>20</sup> When ordering documents from BCPI, please provide the appropriate FCC document number (for example, FCC 98-194 for the *Broadcast First Report and Order*, FCC 99-74 for the *Broadcast First Reconsideration Order*, and DA 05-1598 for this public notice).

1.2105(a)(2)(viii).<sup>21</sup> Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect or, in their reasonable assessment, have the potential to affect bids or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.<sup>22</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>23</sup> The “geographic license area” is the market designation of the particular service.<sup>24</sup> For the FM service, the market designation is the particular vacant FM allotment (e.g., Wasilla, Alaska, Channel 265C2, Market FM001). In Auction No. 62, for example, the rule would apply to applicants bidding for any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications during the period from the FCC Form 175 short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants are each eligible to bid on only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either is eligible to bid on. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.<sup>25</sup>

Bidders competing for construction permits for any of the same designated markets must not communicate indirectly about bids or bidding strategy.<sup>26</sup> Accordingly, such bidders are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could likewise occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>27</sup> However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>28</sup>

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<sup>21</sup> See 47 C.F.R. §§ 1.2105(a)(2)(viii); 1.2105(c)(1); see also 47 C.F.R. § 73.5002; *Part 1 Seventh Report and Order*, 16 FCC Rcd 17546.

<sup>22</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>23</sup> See, e.g., *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶4, n. 19 (EB 2004), *application for review pending* (collusion rule applies to “applicants” regardless of whether they are qualified to bid); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to except an applicant’s controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>24</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

<sup>25</sup> 47 C.F.R. § 1.2105(c)(7)(i);

<sup>26</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

<sup>27</sup> See *Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998).

<sup>28</sup> *Id.*, 13 FCC Rcd at 11978 ¶ 13.

The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for construction permits in the same designated market. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175.<sup>29</sup> If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same designated market.<sup>30</sup> By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Sections 1.2105(c) and 73.5002.

Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>31</sup> Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>32</sup>

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.<sup>33</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.<sup>34</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>35</sup>

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Any applicant found to have

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<sup>29</sup> See 47 C.F.R. § 1.2105(c)(7)(i).

<sup>30</sup> See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995).

<sup>31</sup> 47 C.F.R. § 1.65.

<sup>32</sup> 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>33</sup> 47 C.F.R. § 1.2107(d).

<sup>34</sup> See 47 C.F.R. § 1.2109(d).

<sup>35</sup> *Id.*

violated the anti-collusion rule may be subject to sanctions.<sup>36</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>37</sup>

A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment E and these documents are available on the Commission's anti-collusion web page.<sup>38</sup>

### 3. Due Diligence

Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific report and order amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid.<sup>39</sup> Reports and orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements.<sup>40</sup> Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid.<sup>41</sup> Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

Potential bidders are also strongly encouraged to conduct their own research prior to Auction No. 62 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 62 are strongly encouraged to continue such research throughout the auction.

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<sup>36</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>37</sup> 47 C.F.R. § 1.2109(d).

<sup>38</sup> <http://wireless.fcc.gov/auctions/anticollusion>

<sup>39</sup> See 47 C.F.R. § 73.202.

<sup>40</sup> See, e.g., *Charlotte Amalie, Frederiksted, and Christiansted, U.S. Virgin Islands*, 19 FCC Rcd 30 (MB 2004); *Cheyenne, Wyoming and Gering, Nebraska*, 15 FCC Rcd 7528 (MMB 2000); *Circleville, Ohio*, 9 F.C.C.2d 159 (1967).

<sup>41</sup> See, e.g., *Ammon, Idaho*, 19 FCC Rcd 23594 (MB 2004); *Atwood, Kansas, McCook, Nebraska, Burlington and Flagler, Colorado*, 20 FCC Rcd 2250 (MB 2005); *Mt. Enterprise, Texas and Hodge, Louisiana*, 20 FCC Rcd 2211 (MB 2005); *Jacksonville, Texas*, 20 FCC Rcd 6261 (MB 2005); *Milner, Ellaville and Plains, Georgia*, 20 FCC Rcd 6073 (MB 2005).

Potential bidders should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent permittees or the construction permits available in Auction No. 62. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or the construction permits available in Auction No. 62. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 62. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction.

**Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 62.**

Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/>. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the [Help](#) file. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at [mbinfo@fcc.gov](mailto:mbinfo@fcc.gov).

The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

**Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations described in Section I.B.4.**

Two commenters suggest reducing the risk attendant to bidding, and advocate that no FM allotment be offered at auction if that allotment is subject to an on-going rulemaking proceeding, remains under reconsideration, or still requires foreign concurrence.<sup>42</sup> International coordination has been completed for all Auction No. 62 FM allotments listed in Attachment A. Furthermore, concurrence data including

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<sup>42</sup> Mullaney Comments at 4. MMTCC Comments at 6. Mullaney also identifies 18 FM allotments with conflicts, according to his research in CDBS.

approval dates are now available in CDBS regarding Canadian and Mexican approvals. With regard to allotment FM160, Meeteetse, WY, Channel 273C, we agree with Mullaney that the FM channel was inadvertently allotted and will remove it from the Auction No. 62 inventory.

We decline, however, to remove any additional allotments from the auction based on the pendency of a rulemaking proceeding which may or may not ultimately affect the FM allotment at issue. All rulemaking proposals and counterproposals regarding FM allotments are entered into the Commission's CDBS system, thus giving notice of the proponent's specific technical proposal. To the extent the allotment proceeding is docketed, the release of a notice of proposed rulemaking or report and order provides further information about the specific technical proposal at hand. As is customary in broadcast auctions, to avoid conflicts with auction proposals and promote a more certain and speedy auction process, the Media Bureau will be releasing its public notice announcing an FM minor change application and petition for rulemaking freeze simultaneous with this public notice.<sup>43</sup> We caution bidders to exercise due diligence in researching whether prior or pending allotment proceedings could affect their bids. To proceed as Mullaney suggests could potentially encourage the filing of frivolous petitions for rulemaking for the sole purpose of preventing an allotment from proceeding to auction. Furthermore, Mullaney provides no evidence indicating that any of the winning bidders in Auction No. 37 were adversely affected by an ongoing rulemaking proceeding, or that any of the Auction No. 37 allotments were sold at substandard amounts due to a then-ongoing rulemaking proceeding. In fact, Mullaney raised similar objections in Auction No. 37, requesting that 39 allotments be deleted from that auction. Of those 39 allotments, 35 were won at auction for a total of over \$22.8 million dollars (net), and 15 of those construction permits have already been granted. We find that proceeding with the auction with the current allotment inventory provides an appropriate balance between the prompt initiation of FM service to those allotment communities and the provision of certainty to auction participants.<sup>44</sup> We will not remove such allotments from the Auction No. 62 inventory.

### **Bidder Alerts**

The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC construction permit constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 62 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

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<sup>43</sup> See "Auction No. 62 Freezes Announced For FM Minor Change Applications and Certain FM Table of Allotments Rule Making Filings," *Public Notice*, DA 05-1600 (June 17, 2005).

<sup>44</sup> *Cf.* Request of Southern Communications Services, Inc. and the United Telecom Council for Postponement of Auction No. 55, *Order*, 18 FCC Rcd 25880, 25881 ¶ 4 (WTB 1993) (Section 309(j)(3)(E)(ii)'s to provide prospective bidders with time to develop a business plan and evaluate the availability of equipment does not require the Commission to postpone an auction until every external factor that might influence a bidder's business plan is resolved with absolute certainty).

- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 62 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

#### **4. National Environmental Policy Act Requirements**

Permittees must comply with the Commission’s rules regarding the National Environmental Policy Act (“NEPA”).<sup>45</sup> The construction of a broadcast facility is a federal action and the permittee must comply with the Commission’s NEPA rules for each such facility.<sup>46</sup> The Commission’s NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### **C. Auction Specifics**

##### **1. Auction Date**

Bidding in Auction No. 62 will begin on Tuesday, November 1, 2005, as announced in the *Auction No. 62 Comment Public Notice*.<sup>47</sup> The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

##### **2. Auction Title**

Auction No. 62 – FM Broadcast

##### **3. Bidding Methodology**

The bidding methodology for Auction No. 62 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC’s Integrated Spectrum Auction

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<sup>45</sup> 47 C.F.R. Ch. 1, Subpart I.

<sup>46</sup> 47 C.F.R. §§ 1.1305-1.1319.

<sup>47</sup> *Auction No. 62 Comment Public Notice* at 1.

System (“ISAS” or “FCC Auction System”), and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.<sup>48</sup>

#### 4. Pre-Auction Dates and Deadlines

Auction Seminar .....	July 27, 2005
Short-Form Application (FCC Form 175) Window Opens .....	July 27, 2005; 12:00 p.m. ET
Short-Form Application (FCC Form 175) Filing Window Deadline.....	August 12, 2005; 6:00 p.m. ET
Upfront Payments (via wire transfer).....	September 30, 2005; 6:00 p.m ET
Mock Auction .....	October 28, 2005
Auction Begins.....	November 1, 2005

#### 5. Requirements for Participation

Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), August 12, 2005, following the electronic filing procedures set forth in Attachment C to this public notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, September 30, 2005.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

#### 6. Proposals to Restrict Participation

Two commenters suggest that we establish restrictions on which entities are eligible to participate in Auction No. 62. Hodson suggests that the top 25 national radio broadcast business conglomerates be prohibited from participating in the auction.<sup>49</sup> Hodson further suggests that any broadcast entity with attributable interests in any license within 250 kilometers of a specified FM allotment should be ineligible to bid on that particular allotment.<sup>50</sup> Mr. Funk proposes that we employ a bidding cap, limiting bidder participation to those licenses that it may “legally own.”<sup>51</sup> We will not impose any eligibility restrictions on bidders in Auction No. 62. Barring certain entities from participating in an auction based on the number of facilities they currently own would constitute a *de facto* amendment of the Commission’s rules. In those cases where they are used, rules concerning eligibility to participate in an auction or hold a license are established in service specific rules adopted by the Commission.<sup>52</sup> Requests made in comments filed to change the eligibility rules are beyond the scope of a public notice regarding the procedures for an auction.<sup>53</sup> Such an issue should have been raised in the context of a rulemaking proceeding concerning

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<sup>48</sup> For additional information regarding the FCC’s Integrated Spectrum Auction System, including sample screen shots, visit the “About ISAS” web page at [http://wireless.fcc.gov/auctions/about\\_isas](http://wireless.fcc.gov/auctions/about_isas).

<sup>49</sup> Hodson Comments at 8-9.

<sup>50</sup> *Id.* at 9.

<sup>51</sup> Funk Comments at 1.

<sup>52</sup> See, e.g., Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payment and Other Procedures for Auction No. 58, *Public Notice*, 19 FCC Rcd. 18190, 18204 (2004).

<sup>53</sup> Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payment and Other Procedures for Auction No. 58, *Public Notice*, 19 FCC Rcd. 18190, 18204 (2004).

service rules for the FM broadcast service. For this reason, we also decline to base auction participation on the numerical limits of the broadcast multiple ownership rules, as Hodson suggests. We had also declined to establish such restrictions on participation in Auction No. 37 for similar reasons.<sup>54</sup>

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<sup>54</sup> See Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 37, *Public Notice*, 19 FCC Rcd 10570, 10581(2004).

**GENERAL AUCTION INFORMATION**

General Auction Questions  
Seminar Registration

FCC Auctions Hotline  
(888) 225-5322, option two;  
or (717) 338-2888  
Hours of service: 8:00 a.m. – 5:30 p.m. ET,  
Monday through Friday

**AUCTION LEGAL INFORMATION**

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division  
(202) 418-0660

**LICENSING INFORMATION**

Rules, Policies, Regulations  
Licensing Issues, Engineering Issues,  
Due Diligence, Incumbency Issues

Audio Division  
(202) 418-2700

**TECHNICAL SUPPORT**

Electronic Filing  
FCC Auction System

FCC Auctions Technical Support Hotline  
(877) 480-3201, option nine; or (202) 414-1250  
(202) 414-1255 (TTY)  
Hours of service: 8:00 a.m. – 6:00 p.m. ET,  
Monday through Friday

**PAYMENT INFORMATION**

Wire Transfers  
Refunds

FCC Auctions Accounting Branch  
(202) 418-0578  
(202) 418-2843 (Fax)

**TELEPHONIC BIDDING**

Will be furnished only to qualified bidders

**FCC COPY CONTRACTOR**

Additional Copies of  
Commission Documents

Best Copy and Printing, Inc  
445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, DC 20554  
(800) 378-3160  
<http://www.bcpweb.com>

**PRESS INFORMATION**

Lauren Patrich (202) 418-7944

**FCC FORMS**

(800) 418-3676 (outside Washington, DC)  
(202) 418-3676 (in the Washington area)  
<http://www.fcc.gov/formpage.html>

**FCC INTERNET SITES**

<http://www.fcc.gov>  
<http://wireless.fcc.gov/auctions>  
<http://wireless.fcc.gov/uls>

## II. SHORT-FORM (FCC FORM 175) FILING REQUIREMENTS

A party's application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.<sup>55</sup> For Auction No. 62, if an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants to participate in Auction No. 62 must file FCC Form 175 electronically prior to 6:00 p.m. ET on August 12, 2005, following the procedures set forth in Attachment C to this public notice. Applicants bear full responsibility for submission of timely and complete FCC Form 175 applications. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.<sup>56</sup> Applicants should read the instructions set forth in Attachment C to this public notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their FCC Form 175 applications.<sup>57</sup>

An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple FCC Forms 175, such additional applications will be dismissed.

Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

### A. New Entrant Bidding Credit

To fulfill its obligations under Section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

#### 1. Eligibility

The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit.<sup>58</sup> The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline – August 12, 2005. Thus, the bidder's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must

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<sup>55</sup> See 47 C.F.R. § 1.2105.

<sup>56</sup> See *id.*

<sup>57</sup> As discussed generally in Reexamination of the Comparative Standards for Noncommercial Educational Applicants, *NCE Second Report and Order*, 18 FCC Rcd 6691 (2003), the opening of a window for nonreserved vacant FM allotments provides a filing opportunity for both noncommercial educational ("NCE") and commercial applicants. However, as discussed in Section III.C, *infra*, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing. 47 C.F.R. § 73.5002(b).

<sup>58</sup> "Media of mass communication" include both commercial and NCE full-power broadcast stations.

have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline – August 12, 2005.<sup>59</sup> Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- all officers and directors of a corporate bidder;
- any owner of 5 percent or more of the voting stock of a corporate bidder;
- all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.<sup>60</sup>

In cases where a bidder's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.<sup>61</sup> Bidders should note that the mass media attribution rules were recently revised.<sup>62</sup>

Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in a bidder shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the bidder, even if such an interest is non-voting.<sup>63</sup>

Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.<sup>64</sup> However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass

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<sup>59</sup> The fact that, on August 12, 2005, a bidder has a pending or granted application to assign or transfer control of a media interest shall not be sufficient to avoid attribution. Bidders must have consummated the transaction by August 12, 2005 to avoid attribution. Thus, a bidder could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing deadline. *See Liberty Productions, a Limited Partnership*, 16 FCC Rcd 12061, *stay denied*, 16 FCC Rcd 18966 (2001), *aff'd sub nom, Biltmore Forest Broadcasting FM, Inc. v. F.C.C.*, 321 F.3d 155 (D.C. Cir.), *cert. denied*, 540 U.S. 981 (2003) ("*Liberty Productions*").

<sup>60</sup> *See* 47 C.F.R. § 73.3555 Note 2.

<sup>61</sup> *See Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992).

<sup>62</sup> *See Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order*, MM Docket No. 94-150, 14 FCC Rcd 12559 (1999) (prior history omitted).

<sup>63</sup> *See* 47 C.F.R. § 73.5008(c).

<sup>64</sup> Further, *any* bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 C.F.R. § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

media interests in determining its eligibility for a New Entrant Bidding Credit.<sup>65</sup> A medium of mass communications is defined in 47 C.F.R. § 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among “media of mass communications” as defined in Section 73.5008(b).<sup>66</sup>

## **B. Application Requirements**

In addition to the ownership information required pursuant to § 1.2112, applicants are required to establish on their FCC Form 175 applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.<sup>67</sup> In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant’s FCC Form 175. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.<sup>68</sup>

### **1. Bidding Credits**

Applicants that qualify for the New Entrant Bidding Credit, as set forth in the applicable rule,<sup>69</sup> are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 C.F.R. § 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 C.F.R. § 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 C.F.R. § 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 C.F.R. § 73.3555 and Note 2 of that section.<sup>70</sup> Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a

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<sup>65</sup> *Broadcast Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

<sup>66</sup> *See Minnesota Christian Broadcasters, Inc.*, 18 FCC Rcd 614 (2003), *aff’d sub nom. Carol DeLaHunt v. F.C.C.*, No. 03-1029 (D.C. Cir. Feb. 4, 2004) and *Minnesota Christian Broadcasters, Inc. v. FCC*, No. 03-1439 (D.C. Cir. June 14, 2005).

<sup>67</sup> *See* 47 C.F.R. §§ 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

<sup>68</sup> *See* 47 C.F.R. §§ 73.5007, 73.5008.

<sup>69</sup> *See* 47 C.F.R. § 73.5007.

<sup>70</sup> *See* 47 C.F.R. § 73.5008.

bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.<sup>71</sup>

Several commenters request that we revise the new entrant bidding credits available for Auction No. 62. MMTC and Mullaney suggest we modify the bidding credit eligibility criteria in two respects. First, they request that we narrow the eligibility criteria to ensure that bidding credits are awarded “only to those who truly deserve them.”<sup>72</sup> In particular, MMTC suggests incorporation of a personal net worth limitation for applicant “control persons” and both commenters suggest limiting bidding credit eligibility to those who have not held an attributable interest in more than three broadcast stations within the previous five years.<sup>73</sup> Second, both MMTC and Mullaney request that we expand bidding credit eligibility so that a bidder’s interest in a standalone AM station would not be attributable on a bid for an FM permit in the same area as the AM station.<sup>74</sup> A third commenter, Hodson, strongly supports initiatives that improve opportunities for small businesses, and suggests that we revise the eligibility criteria for new entrant bidding credits.<sup>75</sup> Hodson also proposes the institution of a credit for the winning bidder of an FM allotment in Auction No. 62 if that bidder was also the entity that initially petitioned the Commission to place that allocation in the FM Table of Allotments. CODO requests that we consider the reservation of certain channels in highly concentrated markets for bidding only by parties eligible for new entrant bidding credits.<sup>76</sup> Similarly, Hodson also requests that we set aside 20 percent of the indicated Auction No. 62 FM allotments for exclusive bidding by new entrants.

The Bureaus are unable to adopt for Auction No. 62 the various suggestions by commenters to revise the criteria for and the amount of the new entrant bidding credit and to adopt new bidding credits based on other criteria. Implementation of these proposals would require amendment of the Commission’s competitive bidding and broadcast service rules, which can only be accomplished through a Commission rulemaking proceeding. The Bureaus’ process for seeking comment on auction procedures is not the appropriate forum in which to raise such rule changes. Such rule changes should have been raised in the context of the rulemaking proceeding establishing bidding credits for the FM broadcast service. With respect to Hodson’s “original petitioner bidding credit” suggestion, the Commission previously addressed and rejected the idea of awarding a credit to an FM applicant that successfully petitioned for the FM allotment of the channel being auctioned in *Broadcast First Report and Order*.<sup>77</sup>

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<sup>71</sup> See *id.* § 73.5007(c).

<sup>72</sup> MMTC Comments at 5; see also Mullaney Comments at 2-3.

<sup>73</sup> MMTC Comments at 5. Mullaney Comments at 3.

<sup>74</sup> MMTC Comments at 5. Mullaney Comments at 2.

<sup>75</sup> Hodson suggests that we restructure the current bidding credit percentages (35, 25, and 15 percent) and replace it with (i) a 45 percent bidding credit for applicants with no attributable interest in any other media of mass communication and less than \$1 million in annual revenues, and (ii) a 30 percent bidding credit for applicants with attributable interests in five or fewer media of mass communication, none of which are within 250 kilometers of the allotment on which the applicant is bidding, if none of the facilities owned has over \$4 million in gross annual revenue. Hodson Comments at 3-4, 9. Hodson further suggests that we eliminate the 15 percent tier contained in 47 C.F.R. § 1.2110(f)(2)(iii). *Id.*, at 3-4. However, bidding credits awarded to small businesses pursuant to 47 C.F.R. § 1.2110(f) are available only in non-broadcast auctions.

<sup>76</sup> CODO Comments at 2.

<sup>77</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15996-97. The Commission also declined to adopt a bidding credit for applicants who would have qualified for an AM daytime only preference in an FM comparative hearing. *Id.* at 15996, n.234.

MMTC urges us quickly to conclude pending Commission proceedings intended to determine whether we can constitutionally adopt race-conscious bidding credits, as well as to study Auction No. 37 to determine whether the auction process unnecessarily imposed barriers to minority entry.<sup>78</sup> In addition to MMTC's proposals here, the Commission has received suggestions in other contexts from various sources that similarly seek to address constitutionally permissible measures to increase minority and female ownership of radio and television stations.<sup>79</sup> These suggestions include interim recommendations of the Commission's Federal Advisory Committee on Diversity for Communications in the Digital Age,<sup>80</sup> as well as proposals filed by MMTC and others in the 2002 biennial ownership review proceeding.<sup>81</sup> Other such recommendations were filed in response to a 2004 Media Bureau public notice, which sought comment: (1) on studies released by the Commission in 2000 that analyzed market entry barriers for women and minorities in the provision and ownership of telecommunications and information products and services; and (2) on constitutionally permissible measures to further the mandates of Section 257 of the Telecommunications Act of 1996 and Section 309(j) of the Communications Act of 1934, as amended.<sup>82</sup> We believe that these MMTC proposals are more appropriately addressed in a separate proceeding rather than in response to a public notice seeking comment on the forthcoming auction of FM broadcast allotments.<sup>83</sup> Accordingly, we will incorporate these proposals into the record of the Commission's Section 257 proceeding.

### C. Permit Selection

In Auction No. 62, applicants must select the construction permits on which they want to bid from the "Eligible Permits" list. In Auction No. 62, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available construction permits to create customized lists of construction permits. The applicant will make selections for one or more of the filter criteria and the system will produce a list of construction permits satisfying the specified criteria. In the FCC Form 175 for certain previous non-broadcast auctions, applicants could use a "Select All" function to indicate that they wanted to pursue all markets being auctioned. One commenter states that the bidding strategy of identifying all available channels so that competitors are unable to determine which allotments "are really of interest" has the

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<sup>78</sup> MMTC Comments at 3-4.

<sup>79</sup> See, e.g., *Media Bureau Seeks Comment on Ways to Further Section 257 Mandate and to Build on Earlier Studies*, Public Notice, MB Docket No. 04-228, DA 04-1690 (rel. June 15, 2004) ("Section 257 proceeding"). Section 257 directs the Commission to identify and eliminate market entry barriers for small telecommunications businesses. 47 U.S.C. § 257. Section 309(j) requires the Commission to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities. 47 U.S.C. §§ 309(j)(3)(B), (4)(D).

<sup>80</sup> The committee, which is chartered until March 2007, has adopted several interim recommendations and is considering others. More information on this committee, its recommendations, and activities is available at: <http://www.fcc.gov/DiversityFAC/>.

<sup>81</sup> *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, and Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area*, Report and Order and Notice of Proposed Rule Making, 18 FCC Rcd 13620 (2003), *aff'd in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3<sup>rd</sup> Cir. 2004). In response to these proposals, the Commission adopted an MMTC proposal regarding the transfer of media properties that collectively exceed the radio ownership cap, and stated that it would "issue a Notice of Proposed Rulemaking to address these issues." *Id.* at 13636.

<sup>82</sup> See Section 257 proceeding.

<sup>83</sup> *Id.*

potential of discouraging truly new entrant applicants from bidding in the auction “if they believe there are hundreds of bidders for the allotment they seek.”<sup>84</sup> Enhancements to the FCC Auction System make it easy for applicants to select multiple construction permits with or without a “Select All” function. The ability for applicants to select and bid on multiple construction permits can improve bidders’ ability to pursue backup bidding strategies during the auction. Based upon our experience in past auctions, we adopt our proposal.

Be advised that there is no opportunity to change construction permit selection after the short-form filing deadline.<sup>85</sup> It is critically important that you confirm your construction permit selection because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its FCC Form 175.

#### **D. Consortia and Joint Bidding Arrangements**

Applicants will be required to indicate on their applications whether they have entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.<sup>86</sup> Applicants will also be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure.<sup>87</sup> If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants for the same market after the deadline.<sup>88</sup>

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same market provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.<sup>89</sup> While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.<sup>90</sup> Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

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<sup>84</sup> Mullaney Comments at 6.

<sup>85</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>86</sup> 47 C.F.R. § 1.2105(a)(2)(ix).

<sup>87</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

<sup>88</sup> See above Section I.B.2.

<sup>89</sup> 47 C.F.R. § 1.2105(c)(4)(i), (ii).

<sup>90</sup> See *Todd Stuart Noordyk*, 16 FCC Rcd 18113, 18117 (2001); see also Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, WT Docket No. 97- 82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 467 (1997)

## **E. Ownership Disclosure Requirements**

The Commission indicated in the *Broadcast First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply.<sup>91</sup> Therefore, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short form are set forth in Section 1.2112 of the Commission's rules.<sup>92</sup> Applicants are responsible for information submitted in FCC Form 175 being complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing FCC Form 175. Applicants can update any information that needs to be changed directly in the FCC Form 175.

To simplify filling out FCC Form 175, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with FCC Form 175, such as information submitted in an on-line FCC Form 602 in connection with wireless services, will automatically be entered into FCC Form 175.

## **F. Provisions Regarding Former and Current Defaulters**

Each applicant must state under penalty of perjury on its FCC Form 175 application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>93</sup> In addition, each applicant must certify under penalty of perjury on its FCC Form 175 application that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency.<sup>94</sup> Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

"Former defaulters" — *i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 62, provided that they are otherwise qualified. However, as discussed *infra* in Section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more

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<sup>91</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15976.

<sup>92</sup> Section 73.5002 of the Commission's rules specifies the bidding procedures, certification requirements and the anti-collusion rules applicable to mutually exclusive applications for commercial broadcast services subject to auction. Subsection (b) of that rule requires the timely submission of short form applications, along with the required certifications, information and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. 47 C.F.R. § 1.2105 requires the disclosure on the short-form of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112.

<sup>93</sup> 47 C.F.R. § 1.2105(a)(2)(xi); *Order on Reconsideration of the Part 1 Third Report and Order*, 15 FCC Rcd at 15317, n. 142.

<sup>94</sup> 47 C.F.R. § 1.2105(a)(2)(x); Amendment of Part 1 of the Commission's Rule — Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15317 ¶ 42 ("Order on Reconsideration of the Part 1 Third Report and Order").

than the normal upfront payment amounts.<sup>95</sup> One commenter, although agreeing with the defaulter and former defaulter certification requirement, suggests as an alternative that if a former defaulter has cured outstanding infractions and has not been delinquent on any non-tax debt owed to any Federal agency for at least a decade, it should only be required to pay the standard upfront payment.<sup>96</sup> The Bureaus cannot adopt this proposal. Implementation of this suggestion would require amendment of Section 1.2106(a) of the Commission's rules, which can only be accomplished through a Commission rulemaking proceeding. "Current defaulters" – *i.e.*, applicants, including their attributable interest holders, that are in default on any payment for Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency – are not eligible to bid in Auction No. 62.<sup>97</sup>

Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of our short-form application process.<sup>98</sup> Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an applicant's ability to comply with the default and delinquency disclosure requirements.<sup>99</sup>

### **G. Installment Payments**

One commenter suggests we allow small businesses to pay for their licenses by making installment payments throughout the eight-year license period.<sup>100</sup> In the *Part 1 Third Report and Order*, the Commission suspended use of installment payments for the foreseeable future.<sup>101</sup> Accordingly, installment payment plans will not be available in Auction No. 62.

### **H. Other Information**

Applicants owned by minorities or women, as defined in Section 1.2110(c)(2), may identify themselves in filling out their FCC Form 175 short-form application regarding this status.<sup>102</sup> This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.

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<sup>95</sup> 47 C.F.R. § 1.2106(a).

<sup>96</sup> Hodson Comments at 7.

<sup>97</sup> 47 C.F.R. § 1.2105(b)(1); 47 C.F.R. § 1.2105(a)(2)(x); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 n.142 ("If any one of an applicant's controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.")

<sup>98</sup> *See* "WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements," *Public Notice*, 19 FCC Rcd 21920 (WTB 2004) ("*Auction Default Disclosure Public Notice*"); Letter to Cheryl A. Tritt, Esq. from Margaret Wiener, 19 FCC Rcd 22907 (WTB-ASAD 2004) (clarifying the term "debt" or "non-tax debt" as referenced in Sections 1.2105(a) and 1.2106(a) of the Commission's rules).

<sup>99</sup> *See Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and FCC Form 175 default and delinquency disclosure requirements for auction applicants).

<sup>100</sup> Hodson Comments at 5.

<sup>101</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Third Report and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 397-401 (1997).

<sup>102</sup> 47 C.F.R. § 1.2110(c)(2).

### **I. Minor Modifications to Short-Form Applications (FCC Form 175)**

After the short-form filing deadline (6:00 p.m. ET August 12, 2005), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as noncommercial educational).<sup>103</sup> Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and addresses and phone numbers of the applicants and their contact persons. Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number. In addition, applicants should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction62@fcc.gov](mailto:auction62@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 62 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

### **J. Maintaining Current Information in Short-Form Applications (FCC Form 175)**

Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>104</sup> Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit should be reported immediately.<sup>105</sup> Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.<sup>106</sup>

## **III. PRE-AUCTION PROCEDURES**

### **A. Auction Seminar — July 27, 2005**

On Wednesday, July 27, 2005, the FCC will sponsor a seminar for parties interested in participating in Auction No. 62 at the Federal Communications Commission headquarters, located at 445 12<sup>th</sup> Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

To register, complete the registration form attached hereto as Attachment B and submit it by Monday, July 25, 2005. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

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<sup>103</sup> See 47 C.F.R. § 1.2105; see also *NCE Second Report and Order*, 18 FCC Rcd at 6700.

<sup>104</sup> For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. See *Liberty Productions*, *supra* note 42, 16 FCC Rcd at 12078.

<sup>105</sup> MMTC suggests that the Commission provide for immediate reporting of bidding credit disentanglements, as it did in Auction No. 37. MMTC Comments at 6.

<sup>106</sup> See 47 C.F.R. § 1.2105(b)(2).

For individuals who are unable to attend, an Audio/Video of this seminar will be available via webcast from the FCC's Auction 62 web page at <http://wireless.fcc.gov/auctions/62/>. Select the "Auction Seminar" link.

### **B. Short-Form Application (FCC Form 175) — Due by August 12, 2005, 6:00 p.m. ET**

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically<sup>107</sup> and received at the Commission prior to 6:00 p.m. ET on August 12, 2005. **Late applications will not be accepted.** There is no application fee required when filing FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See Section III.D, *below*.

Applications may generally be filed at any time beginning at noon ET on July 27, 2005, until 6:00 p.m. ET on August 12, 2005. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 12, 2005.

Applicants must always click on the **SUBMIT** button on the Certify and Submit screen of the electronic form to successfully submit their FCC Form 175s or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C. Technical support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

### **C. Application Processing and Minor Corrections**

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting such corrected applications.

Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in the public notice.<sup>108</sup> All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction.<sup>109</sup> In the *NCE Second Report and Order*, the Commission held that applications for NCE FM stations on non-reserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.<sup>110</sup> Accordingly, if an FCC Form 175 filed during the Auction No. 62 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing.<sup>111</sup>

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<sup>107</sup> 47 C.F.R. § 1.2105(a).

<sup>108</sup> *Id.* § 73.3573(f)(4).

<sup>109</sup> In the *NCE Second Report and Order*, the Commission determined that short-form applicants that do not identify themselves on their FCC Form 175 as "noncommercial educational" will be considered as a matter of law, applicants for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

<sup>110</sup> *Id.* at 6699-6701. See also 47 C.F.R. § 73.5002(b).

<sup>111</sup> *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701. See also 47 C.F.R. § 73.5002(b).

As described more fully in the Commission's rules, after the August 12, 2005, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as NCE).<sup>112</sup>

#### **D. Upfront Payments — Due September 30, 2005**

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. **All upfront payments must be received in the proper account at Mellon Bank by 6:00 p.m. ET on September 30, 2005.**

##### **1. Making Auction Payments by Wire Transfer**

Wire transfer payments must be received by 6:00 p.m. ET on September 30, 2005. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261  
Receiving Bank: Mellon Pittsburgh  
500 Ross St.  
Pittsburgh, PA 15262  
BENEFICIARY: FCC/Account # 910-1182  
Originating Bank Information (OBI Field): (Skip one space between each information item)  
"AUCTIONPAY"  
APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)  
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A62U)  
FCC CODE 1 (same as FCC Form 159, block 28A: "62")  
PAYER NAME (same as FCC Form 159, block 2)  
LOCKBOX NO. # 358414

**NOTE:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer — Auction Payment for Auction No. 62." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline.<sup>113</sup> **Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.**

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<sup>112</sup> 47 C.F.R. § 1.2105; see also Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999). See also *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

<sup>113</sup> See Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (2003).

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 62 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the September 30, 2005, deadline will result in dismissal of the application and disqualification from participation in the auction.

## 2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D to this public notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

## 3. Amount of Upfront Payment

In the *Part 1 Order* the Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction.<sup>114</sup> In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that “former defaulters,” *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to make upfront payments 50 percent greater than non-“former defaulters.”<sup>115</sup> For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules.<sup>116</sup>

In the *Auction No. 62 Comment Public Notice*, we proposed that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.<sup>117</sup> In order to bid on a construction permit, otherwise qualified bidders that applied for that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on FCC Form 175, but rather to cover the number of bidding units that are associated

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<sup>114</sup> Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

<sup>115</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); *see* 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>116</sup> 47 C.F.R. § 1.2110(b).

<sup>117</sup> *Auction No. 62 Comment Public Notice* at 3.

with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.<sup>118</sup>

In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum. Hodson states that he would “seriously support . . . having no minimum opening bid amount or reserve price.”<sup>119</sup> Alternately, Hodson suggests limiting upfront payments to no more than \$50,000 for any allotment, and to \$5,000 for allotments for the first local transmission services to communities of under 10,000 population.<sup>120</sup> Hodson suggests that lower upfront payment amounts will increase bidder participation and ensure that smaller populations will receive service. However, our auction experience has shown no such correlation between the amount of the upfront payment and bidder interest. Moreover, our method of setting upfront payments is designed to ensure that permits will be awarded to the parties that value them most, rather than encouraging speculation by potentially discounting prices. We thus decline to adopt Hodson’s proposal. The specific upfront payment and bidding units for each construction permit are set forth in Attachment A of this public notice.<sup>121</sup>

In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active on (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s eligibility after the upfront payment deadline.**

<b>Example: Upfront Payments and Bidding Flexibility</b>				
<b>Market Number</b>	<b>Channel/Class</b>	<b>Location</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
FM362	232C3	Viola, AR	50,000	50,000
FM015	279C3	Flagstaff, AZ	70,000	70,000

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 120,000 bidding units (50,000 + 70,000). If a bidder only wishes to bid on one, but not both, purchasing 70,000 bidding units would meet the requirement for either construction permit. The bidder would be able to bid on either construction permit, **but not both at the same time**. If the bidder purchased only 50,000 bidding units, it would have enough eligibility for the Viola, AR construction permit, but not for the Flagstaff, AZ construction permit.

Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5.<sup>122</sup> In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient

<sup>118</sup> Provisionally winning bids are bids that would become winning bids if the auction were to close after the given round. (See below Section IV.B.4).

<sup>119</sup> Hodson Comments at 8.

<sup>120</sup> *Id.* at 7.

<sup>121</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>122</sup> 47 C.F.R. § 1.2106(a).

upfront payment to establish eligibility to bid on at least one of the construction permits applied for on its FCC Form 175, the applicant will not be eligible to participate in the auction.

#### 4. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

The Commission will use wire transfers for all Auction No. 62 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank  
ABA Number  
Address of Bank  
Contact and Phone Number  
Account Number to Credit  
Name of Account Holder  
FCC Registration Number (FRN)  
Taxpayer Identification Number (see below)  
Correspondent Bank (if applicable)  
ABA Number  
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.<sup>123</sup>) Eligibility for refunds is discussed in Section V.E., *below*.

#### E. Auction Registration

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. **The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID cards that will be required to place bids (or access the FCC Auction System) and the telephonic bidding phone number.**

Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, October 27, 2005, should call (717) 338-2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost SecurID cards can be replaced only by appearing **in person** at the FCC headquarters, located at 445 12<sup>th</sup> St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms

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<sup>123</sup> 47 C.F.R. §1.1910.

of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

#### **F. Remote Electronic Bidding**

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder’s Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 62.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

#### **G. Mock Auction — October 28, 2005**

All qualified bidders will be eligible to participate in a mock auction on Friday, October 28, 2005. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

### **IV. AUCTION EVENT**

The first round of bidding for Auction No. 62 will begin on Tuesday, November 1, 2005. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

#### **A. Auction Structure**

##### **1. Simultaneous Multiple Round Auction**

In the *Auction No. 62 Comment Public Notice*, we proposed to award all construction permits in Auction No. 62 in a simultaneous multiple round auction.<sup>124</sup> In a simultaneous multiple round auction, all construction permits are available during the entire auction, and bids are accepted on any construction permit until the auction concludes. Summit and Mullaney found the structure unfair to new entrant bidders.<sup>125</sup> Mullaney argued that keeping the bidding open on all permits forces the continued monitoring of all permits after each round of bidding and therefore unduly increases the administrative costs for these smaller applicants.<sup>126</sup> Both commenters suggest that after a designated number of consecutive rounds ensue without additional activity, the auction for that particular FM channel should be declared closed and the permit awarded to the provisionally winning bidder.<sup>127</sup> Through its experience with auctions, the Commission has found that the simultaneous multiple round bidding design best advances the goals of

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<sup>124</sup> *Auction No. 62 Comment Public Notice* at 3.

<sup>125</sup> Summit Comments at 1. Mullaney Comments at 3.

<sup>126</sup> Mullaney Comments at 3.

<sup>127</sup> Summit Comments at 1. Mullaney Comments at 3.

competitive bidding. This auction design generates the most information about relative prices during the course of the auction and provides bidders with the greatest flexibility to pursue back-up strategies. Furthermore, in addition to the informational and bidding flexibility advantages, simultaneous multiple round auctions engender vigorous competition and are more likely to place construction permits in the hands of the bidder with the highest valuation.<sup>128</sup> We therefore conclude that it is operationally feasible and appropriate to auction the FM broadcast stations construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction.

## 2. Eligibility and Activity Rules

In the *Auction No. 62 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.<sup>129</sup> We received no comments on this issue.

For Auction No. 62 we adopt this proposal. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.**

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bid Amounts and Bid Increment Amounts" in Section IV.B.3, *below*). The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Section IV.A.3 and "Stage Transitions" in Section IV.A.4, *below*), we adopt them for Auction No. 62.

## 3. Auction Stages

In the *Auction No. 62 Comment Public Notice*, we proposed to conduct the auction in two stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on construction permits representing

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<sup>128</sup> *Part 1 Second R&O*, 9 FCC Rcd at 2366.

<sup>129</sup> *Id.* at 3.

at least 75 percent of its current bidding eligibility.<sup>130</sup> Finally, we proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

Two commenters, Summit and Hodson, oppose the introduction of staged bidding, which they believe will confuse bidders and, in Summit's view, advantage larger bidders who "can hire a math strategy expert" to determine optimal bids.<sup>131</sup> Both Hodson and Summit favor retention of a 100 percent activity requirement.<sup>132</sup> We disagree. If anything, the 100 percent bidding requirement is more difficult, as it forces bidders to assemble groups of bids – often in a short time – that taken together equal exactly the number of bidding units the bidders possess. Under our proposal, a bidder's Stage One bids and provisionally winning bids need only total three-quarters or more of the bidder's eligibility – a level that is neither difficult to calculate nor to implement. Bidders do not need to calculate their required activity; the FCC Auction System clearly displays for a bidder whether its bids meet the activity requirement.<sup>133</sup> Moreover, even though the 95 percent activity level in Stage Two is close to the former 100 percent activity requirement, the five percent difference provides enough flexibility to enable participants to bid without having to match exactly their bidding eligibility. Further, the lack of a 100 percent activity requirement can improve bidders' ability to pursue backup bidding strategies during the auction. Thus we believe that a staged bidding approach will better serve Auction No. 62 applicants than the activity requirement advocated by Summit and Hodson.

Marquee proposes that the minimum activity level in Stage One of the auction be 50 percent of bidding eligibility (Rounds 1-20), with minimum activity in Stage Two set for 75 percent (Rounds 21 and thereafter), suggesting in the alternative that we adopt a 100 percent minimum activity requirement in Stage Three, which would commence with Round 41. Marquee believes the lower activity requirements will result in higher bids, by allowing bidders to monitor activity on certain allotments without being forced to bid or drop out.<sup>134</sup> However, we believe that such lower activity requirements will prolong the auction by allowing bidders to postpone bidding activity until the later rounds of the auction. We believe the 75 percent Stage One activity requirement represents the best compromise between allowing auction participants time to learn from the information revealed in the auction, and requiring them to participate actively throughout the auction. We thus decline to adopt Marquee's suggestion.

We adopt our proposals for the activity rules and stages. Below are the activity levels for each stage of the auction. The Bureaus reserves the discretion to further alter the activity percentages before and/or during the auction.

**Stage One:** During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 75 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by four-thirds (4/3).

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<sup>130</sup> *Id.* at 3-4.

<sup>131</sup> Summit Comments at 1. *See also* Hodson Comments at 10.

<sup>132</sup> Summit Comments at 1; Hodson Comments at 10.

<sup>133</sup> For additional information regarding the FCC's Integrated Spectrum Auction System, including sample screen shots, visit the "About ISAS" web page at [http://wireless.fcc.gov/auctions/about\\_isas](http://wireless.fcc.gov/auctions/about_isas).

<sup>134</sup> Marquee Comments, Section I(C).

**Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by either logging in to the FCC Auction System or by accessing the bidder summaries on the public results page.

Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, we adopt them for Auction No. 62.

#### **4. Stage Transitions**

In the *Auction No. 62 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or lower for three consecutive rounds of bidding. We further proposed that the Bureaus would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.<sup>135</sup> We received no comments on this issue.

We adopt our proposal. Thus, the auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids,<sup>136</sup> the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 62.

#### **5. Activity Rule Waivers and Reducing Eligibility**

In the *Auction No. 62 Comment Public Notice*, we proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.<sup>137</sup> Marquee suggests we increase the number of activity rule waivers to five, in order to accommodate bidders who might find themselves unavailable to place bids at some point during the course of the auction.<sup>138</sup> Based on our experience in previous auctions, however, we find that three activity

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<sup>135</sup> *Id.* at 3-4.

<sup>136</sup> When monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the construction permits receiving new provisionally winning bids, excluding any FCC-held construction permits.

<sup>137</sup> *Auction No. 62 Comment Public Notice* at 4-5.

<sup>138</sup> Marquee Comments, Section I(D).

waivers should be adequate to provide for unavoidable absences from bidding, and that more waivers could unduly prolong the auction.

We adopt our proposal that each bidder be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (known as a "proactive waiver") or applied automatically by the FCC Auction System (known as an "automatic waiver") and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round. We are satisfied that our practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Section IV.A.3 *above*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. **Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.**

## 6. Auction Stopping Rules

For Auction No. 62, the Bureaus proposed to employ a simultaneous stopping rule approach.<sup>139</sup> The Bureaus also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

The Bureaus further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous provisionally winning bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply

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<sup>139</sup> *Id.* at 9.

as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

In addition, we proposed that the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

We proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.<sup>140</sup> Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

Two commenters suggest using a non-simultaneous stopping rule.<sup>141</sup> We believe that our proposed stopping rules are most appropriate for Auction No. 62, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. We therefore decline their suggestion and adopt our proposed stopping rules. Auction No. 62 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule.

## **7. Auction Delay, Suspension, or Cancellation**

In the *Auction No. 62 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.<sup>142</sup>

Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

### **B. Bidding Procedures**

#### **1. Round Structure**

The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

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<sup>140</sup> *Id.* at 9.

<sup>141</sup> Summit Comments at 1. Mullaney Comments at 3.

<sup>142</sup> *Id.* at 5.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

## 2. Reserve Price or Minimum Opening Bid

Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>143</sup> Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>144</sup> Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.<sup>145</sup> The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.<sup>146</sup> This is consistent with policy applied in earlier spectrum auctions, including Auction Nos. 25, 27, and 54 (Closed Broadcast); Auction No. 32 (AM Broadcast); and Auction No. 37 (FM Broadcast).

In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 62, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction.<sup>147</sup> Specifically, a minimum opening bid was proposed for each MX group listed in Attachment A. The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions. Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits.<sup>148</sup>

In the alternative, the Bureaus sought comment on whether, consistent with the Section 309(j), the public interest would be served by having no minimum opening bid or reserve price.<sup>149</sup>

Summit requests that we lower the minimum opening bids for two FM allotments -- FM145, Arnoldsburg, WV and FM146, Burnsville, WV, claiming that the communities are within two of West Virginia's poorest

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<sup>143</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>144</sup> See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 375, 455-456 ¶ 141 (1997) (“*Part 1 Third Report and Order*”).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Auction No. 62 Comment Public Notice* at 6.

<sup>148</sup> See 47 U.S.C. 309(j)(3)(C).

<sup>149</sup> *Auction No. 62 Comment Public Notice* at 6.

rural counties and the population within each county is decreasing.<sup>150</sup> As discussed above, population is but one factor in determining minimum opening bid amounts. Furthermore, we consider population estimates within the proposed FM service contour at the allocation reference coordinates, not county population data. Generally, the service area of an FM station proposal extends beyond the boundaries of a particular county, and the population within that service area is therefore greater than the population of the county. Moreover, many allotments in Auction No. 62 with similar population coverage are in rural areas with lower than average household income and have experienced a population decline. Under these circumstances, we are not persuaded that the minimum bid amounts are unreasonable, and decline to modify the minimum opening bid amounts for the two West Virginia FM allotments.

Sutton seeks to reduce the minimum opening bid amount for FM 113, Due West, SC, Channel 237A. As the original proponent of the FM allotment, Sutton asserts that the proposed minimum opening bid amount is excessive, considering the population of the community of Due West, the area demographics, and the potential for upgrade and maximization.<sup>151</sup> While conceding that the total population for the proposed Due West facility is over 100,000 persons, Sutton claims that the dominant market that the station would serve is already a depressed market for radio stations.<sup>152</sup> We are not persuaded that the minimum bid amount is disproportionate to the population to be served by the proposed FM facility in this instance, and accordingly decline to modify the minimum opening bid amount for the Due West, SC, FM allotment.

More generally, Mullaney alleges that the Commission has oversimplified the method used to ascertain the population for each FM allotment.<sup>153</sup> Specifically, in calculating the coverage area of an allotment, he claims that the Commission used "perfect 'circles' of coverage" instead of the preferred terrain-dependant coverage. Failure to use terrain-dependant coverage may result in some allotments being sold at a price much lower than they should be, Mullaney asserts. Contrary to Mullaney's contention, the Commission calculated coverage areas and associated populations using terrain-dependant coverages. Specifically, the staff used 360 evenly spaced radials for each allotment, starting at true north, and calculated the specific antenna height above mean sea level to achieve the correct class maximum antenna height above average terrain (HAAT). Then, using class maximum facilities centered at the allotment reference coordinates, the staff determined the contour distance for all azimuths. These contours were then used to calculate the population for each FM allotment. This method provides more than adequate accuracy to determine the population to be served by the proposed FM facility for the purpose of calculating minimum opening bid amounts.

We believe that the proposed minimum bid amounts are appropriate, and we adopt our proposal. The minimum opening bid amounts we adopt for Auction No. 62 are reducible at the discretion of the Bureaus. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain requests to reduce the minimum opening bid amount on specific construction permits.

The specific minimum opening bid amounts for each construction permit available in Auction No. 62 are set forth in Attachment A.<sup>154</sup>

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<sup>150</sup> Summit Comments at 2.

<sup>151</sup> Sutton Comments at 2.

<sup>152</sup> Sutton Comments at 4.

<sup>153</sup> Mullaney Comments at 1-2.

<sup>154</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

### 3. Minimum Acceptable Bid Amounts and Bid Increment Amounts

In the *Auction No. 62 Comment Public Notice*, we proposed to use a minimum acceptable bid increment of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage – *i.e.*, (provisionally winning bid amount) \* (1.10). We will round the result using our standard rounding procedures.<sup>155</sup> We further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increments amounts if we determine that circumstances so dictate.<sup>156</sup> One commenter suggests reducing the minimum bid increment to five percent after ten rounds or once the high bid exceeds \$100,000, arguing that the ten percent increment disadvantages smaller entities as the high bids increase.<sup>157</sup> We believe that a bid increment smaller than ten percent has the potential to prolong the auction, but note again that we retain the discretion to change the minimum acceptable bid amounts and bid increments if events so warrant. Thus, we will begin the auction with a minimum acceptable bid percentage of 10 percent.

In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts.<sup>158</sup> The FCC Auction System will list the nine acceptable bid amounts for each construction permit.<sup>159</sup> Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount.

The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid amount and eight other bid amounts based on the bid increment percentage. The first additional acceptable bid amount, above the minimum acceptable bid amount, equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded – *e.g.*, if the bid increment percentage is 10 percent, then the next bid amount will equal (minimum acceptable bid amount) \* 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.30, rounded; etc. We will begin the auction with a bid increment percentage of 10 percent. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

In the case of a construction permit for which the provisionally winning bid has been withdrawn,<sup>160</sup> the minimum acceptable bid amount will equal the amount of the second highest bid received for the construction permit. The additional bid amounts above the minimum acceptable bid amount are calculated using the bid increment percentage as described in the previous paragraph.

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<sup>155</sup> *Id.*

<sup>156</sup> *Auction No. 62 Comment Public Notice* at 7.

<sup>157</sup> Marquee Comments, Section II(C).

<sup>158</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See supra* Section III.D.3 “Amount of Upfront Payment.”

<sup>159</sup> In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

<sup>160</sup> *See infra* Section IV.B.6 “Bid Removal and Bid Withdrawal.”

The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System. The Bureaus may also use their discretion to adjust the minimum bid increment amount without prior notice if circumstances warrant.

#### **4. Provisionally Winning Bids**

At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.<sup>161</sup>

In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids).<sup>162</sup> No comments were received on this proposal. Therefore, the Bureaus adopt their proposal. A pseudo-random number generator based on the L’Ecuyer algorithms will be used to assign a random number to each bid.<sup>163</sup> The tied bid having the highest random number will become the provisionally winning bid. Eligible bidders, including the provisionally winning bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the construction permit, unless that provisionally winning bid was withdrawn. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid will once again be determined based on the highest bid amount received for the construction permit.

#### **5. Bidding**

During a round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw provisionally winning bids from previous bidding rounds, remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids and withdrawing multiple provisionally winning bids (subject to the limitation on withdrawal rounds discussed below) during a round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder’s bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed or withdrawn its bid do not count towards the bidder’s current activity.

All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 62. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

A bidder’s ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on the bidder’s FCC Form 175 and (2) the bidder’s

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<sup>161</sup> See *supra* Section IV.A.2.

<sup>162</sup> *Auction No. 62 Comment Public Notice* at 8.

<sup>163</sup> A description of the L’Ecuyer algorithms can be found in L’Ecuyer, P. (1999) “Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators” *Operations Research* 47 (1), pp.159-164. A longer version of this paper and the C code for the algorithms can be found on the author’s website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

upfront payment amount. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a “round summary” for each round after they have completed all of their activity for that round.

In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts.<sup>164</sup> For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box.<sup>165</sup> Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an “upload” function that allows bidders to upload text files containing bid information.

Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there is a provisionally winning bid on a construction permit, the FCC Auction System will calculate a minimum acceptable bid amount for that construction permit for the following round, as described in Section IV.B.3.

Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

## **6. Bid Removal and Bid Withdrawal**

In the *Auction No. 62 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.<sup>166</sup> With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder’s discretion.

Some commenters suggested modifications to our bid withdrawal procedures. Wildcat/Connoisseur note that, in Auction 37, some high bids were withdrawn late in the auction, returning those permits to the Commission after competing bidders had reduced their bidding eligibility below the level necessary to place new bids for the permits.<sup>167</sup> They suggest that, if a bidder withdraws a standing high bid for a particular permit, any applicant that had previously been a high bidder for that permit should, if necessary, have its bidding eligibility restored to enable it to resume bidding for the permit. Wildcat/Connoisseur assert that such measures are necessary to prevent “gaming” the auction process by unscrupulous applicants.<sup>168</sup> However, Wildcat/Connoisseur’s solution would involve substantial additional programming of the FCC Auction System. Instead, we have opted for an alternative approach toward reducing the

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<sup>164</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See supra* Section III.D.3 “Amount of Upfront Payment.”

<sup>165</sup> In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

<sup>166</sup> *Auction No. 62 Comment Public Notice* at 8-9.

<sup>167</sup> Wildcat and Connoisseur Comments at 2-3.

<sup>168</sup> *Id.* at 6-8.

number construction permits that remain unsold at the end of the auction due to withdrawn bids.<sup>169</sup> First, by allowing bid withdrawals in only one round, we are restricting the opportunity for withdrawing provisionally winning bids. Secondly, by implementing a staged auction and using activity requirements of less than 100 percent, we are increasing the chance that other bidders might have sufficient eligibility to bid on construction permits for which provisionally winning bids have been withdrawn.

MMTC suggests that the Commission should allow the “second-place bidder to be designated as a winner [of a permit] when the high bidder withdraws” a high bid during the auction and no other bidder places a high bid on the permit by the end of the auction.<sup>170</sup> MMTC reasons that such an approach would avoid the expense of re-auctioning a permit, result in the provision of service to the public more rapidly, and reward applicants “for prudence.”<sup>171</sup> The Commission’s rules do not provide for the procedure suggested by MMTC. Pursuant to section 1.2109(b) of the Commission’s rules, however, the Bureau retains the discretion to offer licenses to the next-highest bidder if a winning bidder withdraws or defaults “after the Commission has declared competitive bidding closed.”<sup>172</sup> Thus, MMTC’s suggestion would require a change of the Commission’s rules, which is beyond the scope of this proceeding. Moreover, after the close of Auction No. 44, WTB rejected a similar request by a second-highest bidder that sought a waiver of Section 1.2109(b) of the Commission’s rules.<sup>173</sup>

In a similar regard, Hodson argues that those bidders who withdrew bids in Auction No. 37 should be prohibited from bidding on those permits in Auction No. 62 for which they previously withdrew bids.<sup>174</sup> Hodson believes such an eligibility restriction is necessary to prevent such parties from inflating the price of such allotments and thereby reducing or eliminating their bid withdrawal obligations.<sup>175</sup> Hodson implies that a winning bidder in such case would not have a sincere interest in providing service using the permit for which it previously withdrew a high bid in Auction No. 37; however, Hodson does not explain why a bidder would assume a higher winning bid obligation simply to avoid bid withdrawal payment liability.<sup>176</sup>

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<sup>169</sup> Because we reject Wildcat/Connoisseur’s suggestion, we do not address all aspects of its proposal, in particular its suggestion that bidding eligibility be restored *only* to the applicants that were previously high bidders for the permit on which the standing high bidder has withdrawn its bid.

<sup>170</sup> MMTC Comments at 6.

<sup>171</sup> *Id.* at 6.

<sup>172</sup> 47 C.F.R. § 1.2109(b) (emphasis added). Although the Bureau has the discretion to award licenses to the next-highest bidder in such cases, the Commission has consistently indicated, “the best course is to re-auction the license.” *Part I Fifth Report and Order*, 9 FCC Rcd at 5565 ¶ 79. The Commission has also recognized that the circumstances for which a next-highest offer would be appropriate are narrow. *Id.*, 9 FCC Rcd at 5565 n. 55 (“If only a small number of relatively low-value licenses are to be re-auctioned and only a short time has passed since the initial auction, the Commission may choose to offer the license to the highest losing bidders because the cost of running another auction may exceed the benefits.”). Further, the Commission has observed that re-offering a defaulted license to the next highest bidder “may not ensure that the license will be offered to the bidder who values it most highly. In particular, as the license is offered to bidders at that next highest bids, other parties can argue that they would pay more for the license if given the opportunity.” *Part I Third R&O*, 13 FCC Rcd at 462 ¶ 153.

<sup>173</sup> Among other things, we rejected that bidder’s assertion that offering the license to the second-highest bidder would result in the award of the license to the party that values it most highly or would be most likely to provide service to the public expeditiously. See Letter from Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, to Gregory M. Schmidt, Vice President, Banks Broadcasting, Inc., 18 FCC Rcd 10431 (2003).

<sup>174</sup> Hodson Comments at 11-12.

<sup>175</sup> *Id.* at 11.

<sup>176</sup> To eliminate a bid withdrawal payment obligation incurred by withdrawing a bid in Auction No. 37, that bidder would have to win the permit with a higher bid in Auction No. 62. See 47 C.F.R. § 1.2104(g)(1). Hodson does not

As noted above, bid withdrawals during an auction are allowed by our procedures, and our rules and auction procedures are designed to allow bidders to withdraw a limited number of bids for entirely legitimate reasons. Hodson's suggestion, like MMTC's, could result in an inefficient auction result: if bidding in a reauction is restricted, a construction permit may be won by a party other than the one that values the permit the most.<sup>177</sup> For these reasons, we decline to adopt MMTC's and Hodson's proposals.<sup>178</sup>

**Procedures.** Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bids" function in the FCC Auction System, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore we adopt them for Auction No. 62.

Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw provisionally winning bids from previous rounds using the "withdraw bids" function in the FCC Auction System (assuming that the bidder has not reached its withdrawal limit). A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). **Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.**

In previous auctions, we have detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits in combination, we conclude that, for Auction No. 62, adoption of a limit on the use of withdrawals to one round per bidder is appropriate. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. We base our decision on this issue upon our experience with bid withdrawals in prior auctions, including PCS D, E and F block, 800 MHz SMR, and FM broadcast auctions. Our decision is in no way a reflection of our view regarding the likelihood of any "gaming" in this auction.

The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to one round. The round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in the round. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a construction permit.

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provide an explanation of why a bidder might incur a greater economic burden to avoid the lower bid withdrawal payment obligation called for by the Commission's rules if it does not sincerely intend to use the permit to offer service to the public.

<sup>177</sup> See *Part 1 Second R&O*, 9 FCC Rcd at 2360 ¶ 70 (recognizing that "auction designs that award licenses to the parties that value them most highly will best achieve" the goals set forth by Congress in Section 309(j) of the Communications Act).

<sup>178</sup> The Bureaus have before them waiver requests from (i) Wildcat Communications LLC, (ii) Bigglesworth Broadcasting, LLC, (iii) Glory Communications, Inc., and (iv) Talkline Communications. These four bidders from Auction No. 37 assert that they should be offered specified construction permits as a second highest bidder after the highest bidder withdrew prior to the close of the auction. Mr. Itz also contends in his Comments filed in Auction No. 62 that because the winning bidder for the Mason, Texas FM allotment in Auction No. 37 defaulted on its high bid, he, as second highest bidder, should be permitted the opportunity to purchase the FM construction permit at his net bid amount before the permit is included in another auction. These requests remain pending before the Bureaus and will be addressed separately.

If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the construction permit, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid.<sup>179</sup> To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate bid increment amounts. The Commission will serve as a “place holder” provisionally winning bidder on the construction permit until a new bid is submitted on that construction permit.

**Calculation.** Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.<sup>180</sup> If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s).<sup>181</sup> In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).<sup>182</sup> This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureaus retain the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a construction permit during the course of an auction, and provides for the assessment of interim bid withdrawal payments.<sup>183</sup> As amended, Section 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a construction permit that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the construction permit. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.<sup>184</sup>

## 7. Round Results

Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, bids withdrawn, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule

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<sup>179</sup> The Bureaus retain the discretion to lower the minimum acceptable bid on such construction permits in the next round or in later rounds.

<sup>180</sup> 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>181</sup> The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. *See* 47 C.F.R. § 1.2104(g)(1).

<sup>182</sup> See following paragraph for discussion of interim bid withdrawal payments.

<sup>183</sup> 47 C.F.R. § 1.2104(g)(1); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302 ¶ 15.

<sup>184</sup> 47 C.F.R. § 1.2104(g).

waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 62 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

## **8. Auction Announcements**

The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link in the FCC Auction System.

## **9. Maintaining the Accuracy of FCC Form 175 Information**

As noted in Section II.I., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auktion62@fcc.gov](mailto:auktion62@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 62 and the name of the applicant. The Bureau request that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents.

## **V. POST-AUCTION PROCEDURES**

### **A. Down Payments and Withdrawn Bid Payments**

After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 62 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 C.F.R. § 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Section IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### **B. Final Payments**

If a winning bidder's long-form application is uncontested, after the termination of the pleading cycle for petitions to deny, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application.<sup>185</sup> If a petition to deny is filed within the pleading cycle for petitions to deny, and if the petition to deny is dismissed or denied, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application promptly after the Media Bureau disposes of any such petition to deny and is otherwise satisfied that the applicant is qualified to hold the specified construction permit.<sup>186</sup> Within ten (10) business days after the date of the release of the public notice announcing that the Commission is prepared to grant a winning bidder's long-form application, each winning bidder will be required to submit the balance of the net amount of its winning

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<sup>185</sup> See 47 C.F.R. § 73.5006.

<sup>186</sup> See 47 C.F.R. § 73.5006(d).

bids (gross bids less any applicable new entrant bidding credits).<sup>187</sup> Broadcast construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 C.F.R. § 1.2109(a).

### C. Long-Form Applications

Within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form 301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 62. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>188</sup> Further filing instructions will be provided to auction winners at the close of the auction.

Mullaney suggests that the FCC Form 301 deadline be extended beyond 30 days, arguing that the Auction No. 37 FCC Form 301 deadline occurred immediately after the end-of-year holiday period, and at a time of year when the locations of many allotments were “subject to winter weather (snow & ice).”<sup>189</sup> Mullaney implies, without explanation, that the winter weather interferes with winning bidders’ “finding and negotiating for a parcel of property.”<sup>190</sup> However, our rules provide for FCC Form 301 filing within 30 days of the auction’s close, which itself is not a fixed date.<sup>191</sup> In Auction No. 37, all winning bidders timely filed their FCC Form 301 applications, and over half of the applicants, 139, received grants within 90 days of the FCC Form 301 filing deadline. Thus, we see no reason to alter our filing deadline.

### D. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2).<sup>192</sup> In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid.<sup>193</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant.<sup>194</sup>

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<sup>187</sup> 47 C.F.R. §§ 1.2109. The Wireless Telecommunications Bureau now employs for wireless service auctions a final payment deadline which is different from the final payment deadline employed in Auction No. 62. *See e.g.*, Auction of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 17553, 17588 (Wireless Telecom. Bur. 2003).

<sup>188</sup> *Id.* §§ 1.2112(b) and 73.5005.

<sup>189</sup> Mullaney Comments at 6.

<sup>190</sup> *Id.*

<sup>191</sup> 47 C.F.R. § 73.5005(a).

<sup>192</sup> *See Abundant Life, Inc.*, 17 FCC Rcd 4006 (2002) (“*Abundant Life*”); *Winstar Broadcasting Corp.*, 17 FCC Rcd 6126 (2002); *Delta Radio, Inc.*, 18 FCC Rcd 16889 (2003).

<sup>193</sup> *See* 47 C.F.R. § 1.2109(b) and (c).

<sup>194</sup> 47 C.F.R. § 1.2109(d).

## **E. Refund of Remaining Upfront Payment Balance**

All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 62 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a provisionally winning bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to:

Federal Communications Commission  
Financial Operations Center  
Auctions Accounting Group  
Gail Glasser  
445 12th Street, SW, Room 1-C864  
Washington, DC 20554

Bidders are encouraged to file their refund information electronically using the **Refund Information** icon in the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578.

### **Media Contact:**

For press inquiries: Lauren Patrich at (202) 418-7944

### **Audio Division, Media Bureau:**

For service rule questions: Lisa Scanlan or Thomas Nessinger at (202) 418-2700

### **Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:**

For legal questions: Howard Davenport at (202) 418-0660

For general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2888

To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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## **VI. ATTACHMENT A**

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file in Microsoft® Excel format.

**VII. ATTACHMENT B**

**FCC AUCTION SEMINAR REGISTRATION FORM**

**Auction No. 62**

The FCC will sponsor a one-day seminar for Auction No. 62 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Wednesday, July 27, 2005  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
Registration 9:30 a.m. - 10:00 a.m.  
Seminar 10:00 a.m. - 2:00 p.m.

If hotel accommodations are needed  
Please contact (888) 225-5322 (option #2) for a list of hotels in the area  
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To register, complete the form below and  
return no later than  
Monday, July 25, 2005, by fax to:

FCC Auction 62  
Auctions and Spectrum Access Division  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

FAX: (717) 338-2850  
Phone: (717) 338-2888

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I/We will attend the Auction No. 62 Seminar, scheduled for Wednesday, July 27, 2005.

Name of attendee: \_\_\_\_\_

Name of attendee: \_\_\_\_\_

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## VIII. ATTACHMENT C

### ELECTRONIC FILING AND REVIEW OF THE FCC FORM 175

#### NOTICE

The Federal Communications Commission uses information collected in FCC Form 175 in determining whether applicants are legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. In addition, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses the information in determining whether the applicant is eligible for the status requested. The Commission's auctions, including the collection of information to determine applicants' qualifications to participate pursuant to Commission rules and requirements, are designed to limit the competitive bidding to qualified applicants; to deter possible abuse of the bidding and licensing process; and to enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest.

The Commission estimates that each response to this collection of information will take on average 1.5 hours. This estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0600). **PLEASE DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.**

The information collected in FCC Form 175 is required to be filed by all applicants to participate in a Commission auction, pursuant to Section 309(j)(5) of the Communications Act and section 1.2105 of the Commission's rules. *See* 47 U.S.C. § 309(j)(5), 47 C.F.R. § 1.2105. Information collected in a submitted FCC Form 175 will be available for public inspection.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a current valid OMB control number with this notice. This collection has been assigned OMB control number 3060-0600.

**THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.**

Applicants must submit their FCC Form 175 applications electronically, via the Internet. **FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Friday, August 12, 2005.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications, and as such will be available for public inspection. Accordingly, applicants should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in Form 175s. Applicants may request that information submitted not be made routinely available for public inspection following the procedures set forth in 47 C.F.R. § 0.459.

Pursuant to Section 0.459(a), such requests must be included as an attachment to Form 175 and identify the information to which the request applies. Because the required information bears on applicants' qualifications, confidentiality requests will not be routinely granted.

Applicants may make multiple changes to their Form 175 applications until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

## **Software Requirements**

Applicants must meet the following minimum software requirements:

- Web Browser:
  - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2\_05 installed.
  - or
  - Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2\_05.

Java Plug-In Version 1.4.2\_05 is available for downloading at [http://java.sun.com/products/archive/j2se/1.4.2\\_05/index.html](http://java.sun.com/products/archive/j2se/1.4.2_05/index.html) (choose the JRE version).

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

### **A. Logging On**

To submit an FCC Form 175 application electronically via the Internet, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the FCC *Integrated Spectrum Auction System* page, applicants may log in to create Form 175 applications using their FRNs and passwords.

### **B. Application Filing Instructions**

The on-line FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.<sup>195</sup> Pursuant to Section 1.2105(a), Form 175 must be submitted electronically. The screens comprising Form 175 consist of six series, each requesting separate types of information: 1) *Applicant Information*; 2) *Permit Selection*; 3) *New Entrant Bidding Credit Eligibility*; 4) *Agreements*; 5) *Ownership*; and 6) *Certify and Submit*. In addition, *Summary* screens, a seventh series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to

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<sup>195</sup> See generally, 47 C.F.R. § 1.2105.

collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application. If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the Form 175 will ask for responsible party information.

Applicants should be able to fill out Form 175 by following the instructions below. Additional help in filling out Form 175 can be accessed from Form 175 in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, filers should use the contact information provided in the *Procedures Public Notice* to obtain additional assistance.

## 1. Applicant Information

The *Applicant Information* screens are the first series of screens in Form 175. In the *Applicant Information* screens, the applicant will provide basic information, including

- the applicant's legal classification, *e.g.*, individual, corporation, etc.
- optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company;
- whether the applicant requests Noncommercial Educational election. This response (yes or no) is mandatory.
- the applicant's name, which will be used as the bidder name during the auction
- citizenship (for individuals), or jurisdiction of formation for legal entities;
- for applicants classified as legal entities, *e.g.*, corporations and partnerships, the name of and information regarding the entity's responsible individual
- the name, address, telephone and fax number of a contact person who will communicate with the Commission regarding the applicant's Form 175
- the names of up to three persons authorized to bid for the applicant in the auction
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims a new entrant bidding credit and the amount claimed.<sup>196</sup>

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.
- To simplify filling out Form 175, applicants that have the same address as their contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.

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<sup>196</sup> See generally, 47 C.F.R. § 1.2105(a)(2)(ii)(A), (iii), and (iv), 73.5002(b).

- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, only those bidders listed on the Form 175 will be authorized to place or withdraw bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required for telephonic bidding.
- Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing.<sup>197</sup>

## 2. Permit Selection

The *Permit Selection* screens make up the second series of screens in Form 175. In the *Permit Selection* screens, the applicant will identify the construction permits the applicant may wish to bid on during the auction. Applicants are not obligated to bid on all construction permits selected; however, applicants will not be able to bid on construction permits that they have not selected on the Form 175.<sup>198</sup> Be advised that there is no opportunity to change this list once the short-form filing deadline passes on August 12, 2005.

To participate in an auction, applicants must select at least one permit. Until the applicant selects a permit, the applicant cannot submit the Form 175. An applicant's permit selections cannot be changed after the initial filing window has closed. Therefore, during the initial filing window it is important to carefully review permit selections to make sure all the construction permits the applicant may wish to bid on have been selected.

The first *Permit Selection* screen, the *Select Permits* screen, contains two lists: 1) a list (on the left) of all construction permits on which the applicant may be eligible to bid ("Eligible Permits"); and 2) a list (on the right) of all construction permits selected by the applicant ("Selected Permits"). Applicants select construction permits by: 1) highlighting the construction permits to be selected in the Eligible Permits list; and then 2) clicking on the **ADD** button to move those construction permits to the Selected Permits list. Applicants can click on the **ADD** button multiple times, so applicants do not need to highlight all the construction permits in which they are interested before clicking on the **ADD** button. The online FCC Form 175 application provides filters that enable you to generate a list of permits. Once you obtain this customized list, you can use it to select the permits you are interested in.

Construction permits can be removed from the list of Selected Permits by: 1) highlighting the unwanted construction permits in Selected Permits; and then 2) clicking the **REMOVE** button. Applicants can click on the **REMOVE** button multiple times, so applicants do not need to highlight all the unwanted construction permits before clicking on the **REMOVE** button.

In either list, applicants can highlight a single construction permit by clicking on it. Applicants can highlight multiple construction permits by holding down the control key (Ctrl) and clicking on each construction permit the applicant wants to highlight. Alternatively, if an applicant wants to highlight multiple construction permits that appear sequentially in a list, applicants can click on

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<sup>197</sup> See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6700. Applicants specifying the same FM allotment are considered mutually exclusive.

<sup>198</sup> See generally, 47 C.F.R. §1.2105(a)(2)(i).

the first construction permit in the sequence and then hold down the shift key while clicking on the last construction permit in the sequence. Finally, applicants can highlight all construction permits by clicking on the **SELECT ALL** button.

**The reference coordinates are also displayed for each listed FM allotment. Once the applicant has selected and added an FM permit, the reference coordinates are followed by a “Edit” icon. Clicking this icon produces a page on which the applicant can change the reference coordinate values to preferred site coordinates.**<sup>199</sup> If the applicant previously has selected construction permits, the initial *Permit Selection* screen will be the *View/Edit Permit Selections* screen. This screen lists the construction permits previously selected for this auction. To select a new construction permit or remove a previously selected construction permit, click the **Edit** icon next to Change Selection at the top-right corner of the list. This will take you to the original *Select Permits* screen, described above.

### 3. New Entrant Bidding Credit Eligibility

The *New Entrant Eligibility* screens are the third series of screens in Form 175. On the initial screen, applicants indicate whether they are claiming the New Entrant bidding credit and, if so, whether they are claiming a 25 percent or 35 percent New Entrant bidding credit. Applicants should ensure that this bidding credit information is consistent with the bidding credit eligibility information provided on the first *Applicant Information* screen.

Applicants claiming either no New Entrant bidding credit or a 35 percent New Entrant bidding credit will not need to provide additional information in Form 175 regarding their claimed New Entrant bidding credit. Such applicants will continue to the next series of screens.<sup>200</sup>

Applicants claiming a 25 percent New Entrant bidding credit will provide additional information regarding existing mass media facilities in which the applicant, or any individual or entity with an attributable interest in the applicant, has an attributable interest. Applicants will identify

- the existing mass media facility or facilities;
- the individual or entity with an attributable interest in the existing mass media facility;
- the attributable interest in the facility; and whether any proposed broadcast facilities are in the ‘same area’ as existing mass media facilities, as defined by applicable Commission rules. *See* 47 C.F.R. §§ 73.5007, 5008.
- In the event that the applicant indicates that any of the proposed broadcast facilities are in the ‘same area’ as the identified existing mass media facility, the applicant will continue to an additional screen where the applicant will indicate which proposed broadcast facility in the auction is in the ‘same area’ as the identified existing mass media facility.

Once the applicant has identified all relevant existing mass media facilities, and all proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility, applicants will continue to the *View/Edit All Facilities* screen. This screen lists the applicant’s claimed New Entrant bidding credit of 25 percent, the relevant existing mass media facilities, and the proposed

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<sup>199</sup> *See Broadcast First Report and Order*, 13 FCC Rcd at 15974 and n.153.

<sup>200</sup> Full-service noncommercial educational stations, on both reserved and nonreserved channels, are included among “media of mass communications” as defined in Section 73.5008(b). *See Minnesota Christian Broadcasters, Inc.*, 18 FCC Rcd 614 (2003), *aff’d sub nom, Carol DeLaHunt v.F.C.C.*, No. 03-1029 (D.C. Cir. Feb. 4, 2004).

broadcast facilities in the ‘same area’ as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Edit** icon or the **Modify bidding credit selection** link to return to the initial New Entrant bidding credit eligibility screen.
- Modifying information about relevant mass media facilities by clicking on them.
- Clicking the **Delete This Facility** link to delete a facility and identified proposed broadcast facilities in the ‘same area.’
- Modifying information regarding a proposed broadcast facility by clicking on its identifier.
- Clicking the **Remove** icon next to information about a particular proposed broadcast facility in the ‘same area’ to remove the corresponding facility.
- Clicking the **Add a proposed ‘Same Area’ Facility to [an existing mass media facility]** link to add a new proposed broadcast facility in the ‘same area.’
- Clicking the **CREATE NEW MASS MEDIA FACILITY** button to add additional mass media facilities.

When all relevant existing mass media facilities, and proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility, have been identified, click the **CONTINUE** button.

#### 4. Agreements

The *Agreements* screens are the fourth series of screens in Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.<sup>201</sup>

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission’s rules by responding yes or no to a question asking whether the applicant has entered into partnerships, joint ventures, consortia or other agreements or understandings of any kind relating to the construction permits being auctioned, including any such agreement relating to the post-auction market structure. If an applicant answers “No,” the applicant will continue with the Ownership series of screens, described below. If the applicant answers “Yes,” the applicant will continue with additional *Agreements* screens described here.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique.

In the event the other party to the agreement is an entity or an individual, different identifying information is required. For either entities or individuals, applicants may provide FCC

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<sup>201</sup> See generally, 47 C.F.R. § 1.2105(a)(2) (viii).

Registration Numbers (FRN), if available. Providing the FRN helps prevent identification errors resulting from parties having similar names or a single party using multiple names. Provision of a party's FRN is optional.

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be cleared from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

The next *Agreements* screen is the *View/Edit Agreements* screen. This screen lists the agreements and parties to each that already have been entered. From this screen, you have the following options:

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party's name.
- Clicking the **Remove** icon next to information about a particular party to remove the corresponding party.
- Clicking the **Add Party to This Agreement** link to add a new party to an agreement.
- Clicking the **CREATE NEW AGREEMENT** button to add additional agreements.

When you have identified all agreements and the parties to each agreement, click the **CONTINUE** button.

## 5. Ownership

The *Ownership* screens are the fifth series of screens in the Form 175. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules.<sup>202</sup> Commission rules also require the disclosure and description of FCC-regulated businesses that are owned by the applicant and parties with certain ownership interests in the applicant.<sup>203</sup>

### a. Information Already On File with the Commission

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. To simplify filling out Form 175, an applicant's most current

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<sup>202</sup> See generally, 47 C.F.R. §§ 1.2105(a)(2)(ii)(B), 1.2110, 1.2112, 73.5002.

<sup>203</sup> See 47 C.F.R. § 1.2112.

Form 602 ownership information on file with the Commission, if in an electronic format compatible with Form 175, will automatically be entered into Form 175. Applicants with ownership information automatically entered into Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Applicants are responsible for information submitted in Form 175 being complete and accurate. Applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting Form 175. Applicants can update the information directly in the Form 175. After the deadline for filing Form 175, ownership information in a submitted Form 175 will be considered to be the applicant's most current ownership information on file with the Commission.

**b. Disclosable Interest Holders and FCC-Regulated Businesses**

- **Section 1.2112(a) of the Commission's rules lists the interest holders in the applicant that must be disclosed in Form 175.**<sup>204</sup>
- **Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in Form 175.**<sup>205</sup>

The initial *Ownership* screen enables the applicant to: 1) add information regarding a disclosable interest holder; 2) add information regarding the FCC-regulated businesses in which the applicant has an interest; or 3) upload ownership information from a file prepared by the applicant.

Uploading information from a file prepared by the applicant is an alternative to individually keying information into the *Ownership* screens in Form 175. Applicants may upload ownership data in a text file, which will then be processed and populated into the system as the applicant's current ownership filing (provided there were no errors). This feature may benefit those applicants with large amounts of ownership data that would otherwise have to be entered into the system manually. It also may benefit those applicants who previously provided ownership data to the FCC in a similar format for other purposes, such as in connection with filing FCC Form 602 in relation to wireless services. Instructions on how to prepare and upload such a file are provided at <http://wireless.fcc.gov/auctions/ownership-upload>. After a successful upload, the *Upload Ownership Disclosure Information Confirmation* screen will appear. Applicants then may click the **CONTINUE** button, which loads the *View/Edit Ownership* screen described below.

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- If an application includes one or more disclosable interest holders with an indirect ownership in the applicant,<sup>206</sup> the application must include an attachment regarding the

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<sup>204</sup> 47 C.F.R. § 1.2112(a). Section 73.5002 specifies the bidding procedures, certification requirements and anti-collusion rules applicable to applications for commercial broadcast services that are subject to auction. Subsection (b) requires the timely submission of Form 175 applications along with all required certifications, information and exhibits pursuant to 47 C.F.R. § 1.2105(a) and any Commission public notices. Section 1.2105 requires the disclosure on the short form of applicant ownership information, as set forth in Section 1.2112.

<sup>205</sup> 47 C.F.R. § 1.2112(a)(7).

relationship between the indirect interest holder(s) and the applicant. The attachment should provide an overview of the ownership chain that links the indirect owners to the applicant, *e.g.*, indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.<sup>207</sup> One attachment connecting all indirect owners to the applicant is sufficient; a separate attachment for each indirect owner is not required. An overview of the ownership connections is sufficient; the attachment does not need to duplicate all the detailed information already provided in the Form 175.

- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant. In some cases, *e.g.*, circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%.
- FCC-regulated businesses in which the applicant has an interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has an interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a Disclosable Interest Holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business.
- To simplify filling out Form 175, applicants can click on the **select business(es) already submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another Disclosable Interest Holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

### c. View/Edit Ownership Disclosure Information

The *View/Edit Ownership Disclosure Information* screen summarizes Ownership information already entered in Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into three groups:

- Disclosable Interest Holders of this Applicant
- FCC Regulated Businesses of this Applicant
- Affiliates of this Applicant

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<sup>206</sup> See 47 C.F.R. § 1.2112(a)(6).

<sup>207</sup> *Id.*

To view the detailed information submitted regarding the applicant, a disclosable interest holder, FCC-regulated business, or an affiliate, click on the relevant party's name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder's information.

## 6. Summary

The *Summary* screens, are the sixth series of screens in Form 175. The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's Form 175 to help locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for errors in the information submitted.

The first *Summary* screen, the *Summary Overview* screen, lists the first four series of screens in the application and provides a **VIEW/EDIT** button to access each one. Here is what happens if you click **VIEW/EDIT** for each series:

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing what you entered for each data entry field. To change any data item, click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Permit Selection takes you to the *View/Edit Permit Selection* screen discussed above in the Permit Selection section.
- Clicking **VIEW/EDIT** for New Entrant Eligibility takes you to the *View/Edit New Entrant Eligibility* screen discussed above in the New Entrant Eligibility section.
- Clicking **VIEW/EDIT** for Agreements takes you to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes you to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters any errors that must be corrected before submitting the application, the error(s) will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters any apparent errors that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent error, click its corresponding **EDIT** button.

Applicants are solely responsible for providing complete and accurate information in Form 175. The automated check is provided to assist applicants in completing Form 175. However, the automated check cannot be relied upon to determine whether the information provided in the Form 175 is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter any errors, a box will appear displaying the message “**No Errors found - You may continue to Certify and Submit.**” Applicants may then click the **CONTINUE TO CERTIFY** button.

## 7. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the Form 175, additional information can be provided in an attachment.

The screen for adding an attachment to Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. The *Add Attachment* screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment. If the attachment is a request for a waiver of any of the Commission's rules or procedures, the applicant should identify the "Type" of attachment as a "Waiver" to facilitate prompt processing. Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button.

A list of any attachments already uploaded along with the applicant's Form 175 appears at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats-- including (but not limited to) Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text--and must verify that the files contain all exhibit information. Files may be no larger than 10 Mb. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended. Files must not be password-protected.

## 8. Certify and Submit

The *Certify and Submit* screens are the seventh and final series of screens in Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission's competitive bidding processes.<sup>208</sup>

The first *Certify and Submit* screen requires applicants to indicate whether they, their affiliates, their controlling interests, and any affiliates of their controlling interests have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>209</sup> Applicants associated with a relevant entity that has been in default or delinquent may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.<sup>210</sup>

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application.

Once the two *Certify and Submit* screens have been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. It is recommended that you print a

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<sup>208</sup> See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

<sup>209</sup> See 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>210</sup> See 47 C.F.R. § 1.2106(a).

copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Friday, August 12, 2005. Late applications or unconfirmed submissions of electronic data will not be accepted.

## **9. Withdrawing an Application Before the Short-Form Filing Deadline And Updating Existing Applications**

### **a. Withdrawing an Application**

If you wish to withdraw a submitted application before the short-form filing deadline, click on the **Withdraw Application** icon on the *Auction Application Manager Create or Review Auction Applications* page and confirm that you want to withdraw your application. If you subsequently decide to file an application, you will have to re-enter all previously-submitted data. Applications may not be withdrawn after the short-form filing deadline.

### **b. Updating Existing Applications**

Once you have logged into the Auctions Application Manager, the *Create or Review Auction Applications* page displays any application you have created or submitted within a filing window. **Note:** This page shows the application status, the date and time the application was last updated; and the date and time the application was last submitted. You may use this page as a reference to confirm the date and time of your most recent submission of the application.

To review or continue working on an existing application, click its auction number. This produces the application's Summary page and places you in a view/edit mode. Applicants must go to the Certify and Submit screens and click the **SUBMIT** button to submit any changes made to their Form 175. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with your unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

After the short-form filing deadline (6:00 p.m. ET August 12, 2005), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).<sup>211</sup>

## **10. Upfront Payment Calculator and Form 159**

You may access the **Upfront Payment Calculator and Form 159** from the *Create or Review Auction Applications* page and from the *Auction Application Submit Confirmation* page. When you click the **Upfront Payment Calculator and Form 159** icon or link, a page will be displayed where you can determine the appropriate upfront payment amount to submit with the Form 159. From the *Calculate Upfront Payment* page, you may click the **Form 159** button to obtain the Form 159.

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<sup>211</sup> See 47 C.F.R. § 1.2105.

## 11. Refund of Upfront Payment

On *My Auctions* page, click on the **See Wire Transfer for Refund Purposes** link to provide your wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit upon receipt of a written refund request.

### C. Application Review

Once the FCC has completed the 175 Application Review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Auction Applications** link in the Public Access area on the FCC Integrated Spectrum Auction System page to start your search.

### D. Technical Support

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. **All calls to the FCC Technical Support Hotline are recorded.**

FCC Technical Support can also be contacted electronically by filling out a help request form at <https://esupport.fcc.gov/request.htm>.

## IX. ATTACHMENT D

### AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2003 Edition)

#### A. Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 62. Applicants need to complete FCC Form 159 carefully, since:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information set forth in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the FCC Form 175 Short Form Application are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358414"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address ( <b>not Post Office box number</b> ) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).

- 21 Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant’s ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
- 24A Payment Type Code - Enter “A62U”
- 25A Quantity - Enter the number “1”
- 26A Fee Due - Amount of Upfront Payment
- 27A Total Fee - Will be the same amount as 26A.
- 28A FCC Code 1 - Enter the number “62” (indicating Auction No. 62).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

**B. Winning Bidder Requirements, Down Payments and Final Payments**

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

## X. ATTACHMENT E

### SUMMARY LISTING OF COMMISSION AND BUREAU DOCUMENTS ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULE

#### A. Commission Decisions:

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, FCC 94-61, *Second Report and Order*, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7253-7255 ¶¶ 48-55 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd 4277 (1995), Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd 15374 (1996).

Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970 (1997); Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755 (1998).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, 14 FCC Rcd 8816 (1999).

Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8305 (1998); Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78 ¶ 20 (1999).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

## **B. Wireless Telecommunications Bureau Decisions:**

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-13, *Order*, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

### **1. Public Notices:**

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, 11 FCC Rcd 7031 (Auc. Div. 1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

### **2. Letters from the Office of General Counsel and the Wireless Telecommunications Bureau:**

*Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission* (released October 25, 1994).

*Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission* (released October 25, 1996).

*Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 1, 1994).

*Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 14, 1994).

*Letter to Jonathan D. Blake from Kathleen O'Brien Ham*, 10 FCC Rcd 13783 (Auc. Div. 1995).

*Letter to Mark Grady from Kathleen O'Brien Ham*, 11 FCC Rcd 10,895 (Auc. Div. 1996).

*Letter to David L. Nace from Kathleen O'Brien Ham*, 11 FCC Rcd 11,363 (Auc. Div. 1996).

*Letter to Elliott J. Greenwald from Christopher J. Wright*, 13 FCC Rcd 7132 (Gen. Counsel 1998).

*Letter to Robert Pettit, from Margaret W. Wiener*, 16 FCC Rcd 10080 (Auc. Div. 2000).

**C. Enforcement Bureau Decisions:**

Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626 (Enf. Bur. 2004).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, 19 FCC Rcd 18635 (Enf. Bur. 2004).

**D. Civil Actions Initiated by U.S. Department of Justice:**

*U.S. v. Omnipoint Corp.*, Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release, U.S. Department of Justice* (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

**How to Obtain Copies of the Anti-Collusion Decisions:**

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>.

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 (telephone) or <http://www.bcpweb.com>.